

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Marc Stuart Goldman,  
10 Plaintiff,

11 v.

12 Commissioner of Social Security  
13 Administration,  
14 Defendant.

No. CV-23-02527-PHX-SMB

**ORDER**

15 At issue is the denial of Plaintiff Marc Stuart Goldman’s Application for Social  
16 Security Disability Insurance benefits by the Social Security Administration (“SSA”) under  
17 the Social Security Act (the “Act”). Plaintiff filed a Complaint (Doc. 1) seeking judicial  
18 review of that denial and an Opening Brief (Doc. 14). Defendant Commissioner of Social  
19 Security (the “Commissioner”) filed a Response Brief (Doc. 16). The Court has reviewed  
20 the parties’ briefs, the Administrative Record (Docs. 8–11 (“AR”)), and the Administrative  
21 Law Judge’s (“ALJ”) decision (AR 1281–1299), and will affirm the ALJ’s decision.

22 **I. BACKGROUND**

23 Plaintiff filed applications for disability, disability insurance benefits, and  
24 supplemental security income on June 4, 2018, alleging disability commencing on January  
25 17, 2018. (AR 274–88.) The Commissioner denied the claim on September 26, 2018, and  
26 denied Plaintiff’s request for reconsideration on March 28, 2019. (AR 182–89, 196–201.)  
27 Thereafter, Plaintiff sought review from an ALJ, who upheld the denial of benefits on May  
28 26, 2020. (AR 13–31.) Plaintiff appealed the ALJ’s unfavorable decision, and on

1 December 29, 2020, the Social Security Appeals Council denied the request for review and  
2 affirmed the ALJ's decision. (AR 1–7.) Plaintiff then filed in this Court, which entered  
3 judgment and ordered the case remanded for further proceedings pursuant to the parties'  
4 joint motion to remand. (AR 1421–24); *Goldman v. Comm'r of Soc. Sec. Admin.*,  
5 CV-21-00328-PHX-JAT (D. Ariz. Sept. 3, 2021), ECF No. 18.

6 On remand, the same ALJ published an unfavorable decision. (AR 1278–1310.)  
7 The ALJ used the five-step sequential evaluation process pursuant to C.F.R. §§ 404.1520,  
8 416.920. (AR 1284–99.) At step one, the ALJ found that Plaintiff had not engaged in  
9 substantial gainful activity since January 17, 2018. (AR 1284.) At step two, the ALJ found  
10 that Plaintiff suffered from medically determinable severe impairments, including: mixed  
11 personality disorder and substance abuse disorders (methamphetamine and cannabis). (AR  
12 1284.) At step three, however, the ALJ found that, even with the drug abuse, Plaintiff did  
13 not have a listed impairment that met the severity of an impairment listed in 20 C.F.R. Part  
14 404. (AR 1284–86.) Based on the impairments and Plaintiff's substance abuse disorder,  
15 the ALJ assessed Plaintiff as retaining the residual functional capacity ("RFC") to perform  
16 a full range of exertional work with some limitation. (AR 1287.) Specifically, the ALJ  
17 found that:

18 [T]his individual can understand, remember and carry out simple, routine  
19 tasks. He is frequently able to interact with supervisors, but never interact  
20 with coworkers and the public. He can make simple work-related decisions  
and tolerate occasional changes in a routine work setting. This individual will  
miss four or more days per month and be off task 10 percent of the workday.

21 (AR 1287.) At steps four and five, the ALJ determined that Plaintiff's RFC precluded his  
22 return to perform his past relevant work and that no jobs existed in significant numbers that  
23 Plaintiff could perform while affected by his substance abuse. (AR 1292.) Thereafter, the  
24 ALJ found that if Plaintiff's substance abuse stopped, then he would not have an  
25 impairment that significantly limited his ability to perform basic work-related activities.  
26 (AR 1293.) Finally, the ALJ concluded that substance use disorder was a contributing  
27 factor material to the determination of disability and thus Plaintiff has not been disabled  
28 under the SSA. (AR 1299.)

1 Plaintiff did not seek review with the Appeals Council, and therefore the ALJ  
 2 decision became the final decision of the Commissioner. (AR 1279); 42 U.S.C. § 405(h).  
 3 Plaintiff then filed the instant Complaint, seeking review from this Court pursuant to 42  
 4 U.S.C. §§ 405(g), 1383(c).

## 5 **II. LEGAL STANDARD**

6 In determining whether to reverse an ALJ's decision, the Court reviews only those  
 7 issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503, 517  
 8 n.13 (9th Cir. 2001). An ALJ's factual findings "shall be conclusive if supported by  
 9 substantial evidence." *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019). The Court may  
 10 set aside the Commissioner's disability determination only if it is not supported by  
 11 substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.  
 12 2007). Substantial evidence is relevant evidence that a reasonable person might accept as  
 13 adequate to support a conclusion considering the record as a whole. *Id.* Generally,  
 14 "[w]here the evidence is susceptible to more than one rational interpretation, one of which  
 15 supports the ALJ's decision, the ALJ's conclusion must be upheld." *Thomas v. Barnhart*,  
 16 278 F.3d 947, 954 (9th Cir. 2002).

17 To determine whether a claimant is disabled for purposes of the Act, the ALJ  
 18 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of  
 19 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*  
 20 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether  
 21 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.  
 22 § 404.1520(a)(4)(i). If so, the claimant is not disabled, and the inquiry ends. *Id.* At step  
 23 two, the ALJ determines whether the claimant has a "severe" medically determinable  
 24 physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not  
 25 disabled, and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant's  
 26 impairment or combination of impairments meets or medically equals an impairment listed  
 27 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. *See* 20 C.F.R. § 404.1520(a)(4)(iii). If  
 28 so, the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step

four. *Id.* At step four, the ALJ assesses the claimant's RFC and determines whether the claimant is still capable of performing past relevant work. 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled, and the inquiry ends. *Id.* If not, the ALJ proceeds to the fifth and final step, where he determines whether the claimant can perform any other work in the national economy based on the claimant's RFC, age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the claimant is not disabled. *Id.* If not, the claimant is disabled. *Id.*

### III. DISCUSSION

Plaintiff asserts the following challenge to the ALJ's decision: "The ALJ's failure to find a severe mental impairment in the absence of substance use lacks the support of substantial evidence and rests on legal error." (Doc. 14 at 5.) Plaintiff contends that both the evidentiary and legal error resulted when the ALJ relied only upon the medical expert's opinion to find that Plaintiff's substance use disorder was a contributing factor material to the disability determination. (Doc. 14 at 8.) According to Plaintiff, relying solely on the medical expert to make that finding violates Social Security Ruling ("SSR") 13-2p(7)(b), which prohibits "adjudicators [from relying on] exclusively on medical expertise." (*Id.*) Plaintiff also argues that, aside from the medical expert, the other medical and testimonial evidence on record does not support the ALJ's disqualifying determination. (*Id.* at 9–16.)

In response, the Commissioner argues that ALJ properly considered the medical expert testimony, alongside other limited medical evidence, to find Plaintiff's multiple personality disorder was non-severe when not under the effect of methamphetamine and cannabis. (Doc. 16 at 3–4.) The Commissioner highlights that even if the Court could reasonably reach a different outcome, the standard on review simply requires the Court to determine whether the ALJ's determination is supported. (*Id.* at 3 (citing *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020).)

An ALJ must not find a claimant to be disabled when substance abuse is a contributing factor material to the determination. 42 U.S.C. §§ 423(d)(2)(C). To be sure, evidence of substance use does not in itself establish materiality. SSR 13-2p(8)(b).

1 Instead, the SSA has explained that the record must include evidence that establishes an  
2 individual with a co-occurring mental disorder would not be disabled in the absence of  
3 drug addiction. SSR 13-2p(7)(b). Here, the medical expert diagnosed a mixed personality  
4 disorder and two substance abuse disorders. (AR 1328–29.) This therefore means that  
5 Plaintiff’s mixed personality disorder is co-occurring with his substance abuse disorders.  
6 *See* SSR 12-2p(7)(b).

7 When opining on Plaintiff’s disorders in the hearing on remand, the medical expert  
8 stated that “it is difficult to discern whether it is symptoms of a personality disorder, which  
9 is what I think is the primary problem, causing him not to show up, or substance abuse.”  
10 (AR 1332.) In response to the ALJ’s inquiry of whether “substance abuse [is] a symptom  
11 of personality disorder,” the medical expert testified that:

12 It can be one of the things, in which people engage . . . for example, in a  
13 borderline personality disorder, engaging in activities that have a propensity  
14 for harm is one of the criteria . . . that can mean self-injury or it can mean  
15 substance use. So, we can fit it in with a personality disorder, and having  
16 worked for 30 years in prison, I would tell you that it’s kind of bidirectional.  
Every person with a substance use problem engages in some antisocial  
behavior . . . . And every person with an antisocial personality disorder has  
probably engaged in substance use at some point.

17 (AR 1338–39.) Though, the medical expert would struggle to conclusively say that  
18 Plaintiff’s drug addiction was a result of his personality disorder because “we don’t have a  
19 specific sober period [to] look at.” (AR 1329.) Then, using education, experience, and  
20 training, the medical expert testified that, in the absence of substance abuse, Plaintiff would  
21 not have a qualifying disability. (*See* AR 1329.)

22 Plaintiff’s chief position is that his personality disorder on its own begets a disability  
23 finding. Therefore, given that the medical expert could not conclude that sobriety would  
24 render Plaintiff’s co-occurring personality disorder non-severe, the ALJ’s reliance on the  
25 expert’s opinion to establish materiality was error. Solely relying on such testimony may  
26 be error, however, the ALJ’s decision cites other medical evidence that underpin the  
27 materiality finding. For example, the ALJ also relied on evidence that tended to show that  
28 Plaintiff’s mental health improved when he was not using methamphetamine and cannabis.

1 (AR 1294–95, 909, 2206–07, 2720–21.) The ALJ also cited hearing testimony and medical  
2 evidence showing that, in the absence of substance abuse, Plaintiff had no indication of  
3 significant anxiety or paranoia, had drastically improved mood at five and seven months  
4 sober, and that Plaintiff, “for the first time in [his] life” had “minimal suicidal ideation” and  
5 a “decreased feeling of rage. (AR 909, 1294–95, 1815–16, 2008–10, 3073.)

6 To be sure, Plaintiff challenges the ALJ’s reliance on those medical records as well,  
7 attacking them as misconstrued or unsupported by other parts of the record. (*See* Doc. 14  
8 at 9–16.) First, Plaintiff argues that the ALJ afforded improper weight to improvements in  
9 Plaintiff’s mood in June 2018, as it resulted from a change of medication, and not from  
10 sobriety. (*Id.* at 9.) At that time, Plaintiff reported a period of sobriety and that his new  
11 medicine resulted in “minimal suicidal ideation” and “decreased periods of rage” but that  
12 he occasionally suffered from “anger issues . . . and difficulty in interpersonal  
13 relationships.” (AR 909.) According to Plaintiff, his still-existing issues of rage and anger  
14 nevertheless constituted a continued severe mental impairment without substance abuse.  
15 (Doc. 14 at 9.) This argument, however, does not stand up to scrutiny. Evidence showing  
16 that medication and sobriety were not the panacea Plaintiff hoped for does not otherwise  
17 preclude the ALJ from finding that, based on the whole record, treatment greatly improved  
18 his condition and rendered his disability non-severe. Indeed, Plaintiff’s own statements  
19 suggest that his sobriety and medication resulted in a drastic change in his struggles with  
20 suicidal thoughts, rage, and the ability to interact with others, which would support a  
21 non-severe finding. (AR 909; *see also, e.g.*, AR 2581 (noting, in 2019, Plaintiff went out  
22 into the community to attempt to initiate a ballot measure on gun reform).)

23 Second, Plaintiff relies on a November 2021 statement from his therapist, in which  
24 she states that Plaintiff’s periods of stability are short lived. (AR 2660.) The ALJ ascribed  
25 partial persuasiveness to this opinion, but otherwise found it to be inconsistent with the  
26 medical records during periods of sobriety. (AR 1296.) Specifically, the ALJ noted that  
27 when Plaintiff is sober, he exhibited decreased mood disturbances. (AR 1296.) As noted,  
28 the ALJ cites to medical records that show Plaintiff’s improvement with respect to anger

1 issues and interacting with others. (AR 1116, 1285, 1295, 2010, 2660 (showing that  
2 Plaintiff rides the bus, attended addition program meetings, shopped, cared for his  
3 daughter, and attempted to start a ballot measure on gun reform)); *see also Molina v.*  
4 *Astrue*, 674 F.3d 1104, 1113 (9th Cir. 2012) (finding that evidence of claimant’s daily  
5 activities, including shopping, attending church, and walking, undermined claims of panic  
6 attacks and inability to be around others). Thus, Plaintiff’s attempt to utilize this letter to  
7 discredit the other substantial evidence the ALJ relies upon is unavailing.

8 Third, Plaintiff contends that treatment notes during Plaintiff’s several and separate  
9 periods of sobriety document symptoms despite lack of substance abuse. (Doc. 14  
10 at 9–11.) The 2018 notes report that Plaintiff had been sober for approximately eight  
11 months. (AR 1998.) Additionally, the 2018 notes indicate with an “X” mark that Plaintiff  
12 hallucinates and further explaining that they are “auditory.” (AR 1200.) The 2019 notes  
13 report Plaintiff having been sober for seven months, and that his mood has “drastically  
14 increased.” (AR 1815–16.) Those notes also detail Plaintiff’s on-again-off-again  
15 relationship with his medications, illicit drug use, and his attempts to move into permanent  
16 housing. (AR 1815.) Finally, the notes state Plaintiff “did not exhibit any delusions” and  
17 “denied any auditory, visual, olfactory, tactile, gustatory hallucinations.” (AR 1810, 1816.)  
18 And, in July 2019, Plaintiff reported he stopped his medications and had no plan to kill  
19 himself, but ruminated on ways to maim himself to get his disability claim approved. (AR  
20 2614.)

21 After reviewing the record and the ALJ decision, it becomes clear that Plaintiff’s  
22 arguments concern fundamental disagreements with the interpretation of the substantial  
23 evidence and less about whether the ALJ decision was based upon substantial evidence.  
24 Again, the Court’s inquiry here is to determine whether the substantial evidence supports  
25 the ALJ’s decision, not whether this Court would rule differently. *See Ford*, 950 F.3d  
26 at 1156 (“Although [plaintiff] argues that the ALJ failed to recognize the inherently  
27 variable nature of mental illness, the court will uphold the ALJ’s conclusion when the  
28 evidence is susceptible to more than one rational interpretation.”). Here, Plaintiff



1 essentially concedes at every turn that his condition improved during periods of sobriety,  
2 but that his condition nevertheless required a disability finding. (*See* Doc. 14.)  
3 Considering those records, the ALJ found that Plaintiff, although symptomatic, would  
4 otherwise have a non-severe personality disorder when not afflicted with drug use  
5 disorders. Put another way, Plaintiff's drug use was material to the disability determination  
6 because when sober, Plaintiff could and did engage in activities that belie a disability  
7 finding. (*See, e.g.*, AR 1116, 1285, 1295, 2010, 2660 (showing that Plaintiff rides the bus,  
8 attended addition program meetings, shopped, cared for his daughter, and attempted to start  
9 a ballot measure on gun reform)); *see also Molina*, 674 F.3d at 1113 (finding that evidence  
10 of claimant's daily activities, including shopping, attending church, and walking,  
11 undermined claims of panic attacks and inability to be around others). Therefore, the ALJ  
12 did not error when he found that Plaintiff's personality disorder on its own would be non-  
13 severe if Plaintiff abstained from using methamphetamine and cannabis.

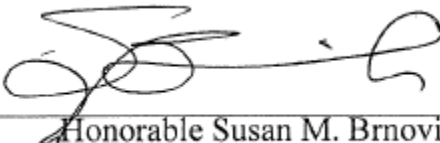
#### 14 **IV. CONCLUSION**

15 Accordingly,

16 **IT IS ORDERED affirming** the ALJ's August 22, 2023 decision.

17 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment  
18 consistent with this order and terminate this action.

19 Dated this 20th day of March, 2025.

20  
21   
22 Honorable Susan M. Brnovich  
23 United States District Judge  
24  
25  
26  
27  
28